

SENATE BILL 405

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J4

2000 Regular Session  
(01r2129)

**ENROLLED BILL**  
-- Finance/Economic Matters --

Introduced by **Senator Astle**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Maintenance Organizations - ~~Subscribers and Enrollees~~ - Private**  
3 **~~Contracts for Health Care Services~~ Reimbursement of Non-Contracting**  
4 **Providers**

5 FOR the purpose of ~~authorizing health care providers or representatives to collect~~  
6 ~~certain payments or charges from subscribers or enrollees of health~~  
7 ~~maintenance organizations under certain circumstances; establishing the usual,~~  
8 ~~customary, and reasonable rate of payment to health care providers by health~~  
9 ~~maintenance organizations under certain circumstances; providing that health~~  
10 ~~maintenance organizations shall bear the burden of proving that their payments~~  
11 ~~are at the usual, customary, and reasonable rate; authorizing subscribers or~~  
12 ~~enrollees of health maintenance organizations to enter into certain private~~  
13 ~~contracts for health care services with health care providers under which the~~  
14 ~~subscribers or enrollees accept financial responsibility for health care services~~  
15 ~~under certain circumstances; requiring the Health Education and Advocacy Unit~~  
16 ~~in the Consumer Protection Division of the Office of the Attorney General to~~  
17 ~~develop a certain form; authorizing the enforcement of the provisions of this Act~~

1 ~~in a certain manner under certain circumstances; altering the reimbursement~~  
 2 ~~that a health maintenance organization must pay a non-contracting health care~~  
 3 ~~provider for certain services delivered to an enrollee or subscriber; requiring a~~  
 4 ~~health maintenance organization to reimburse a non-contracting health care~~  
 5 ~~provider at a certain rate; requiring a health maintenance organization to~~  
 6 ~~disclose a certain reimbursement rate on request of a certain health care~~  
 7 ~~provider; authorizing the enforcement of certain provisions of this Act in a~~  
 8 ~~certain manner under certain circumstances; repealing certain provisions of law~~  
 9 ~~requiring the Maryland Insurance Administration to conduct a certain study~~  
 10 ~~and submit certain reports; requiring the Health Services Cost Review~~  
 11 ~~Commission to submit a certain report to certain committees of the General~~  
 12 ~~Assembly on or before a certain date; providing for the termination of certain~~  
 13 ~~provisions of this Act; *providing for the application of this Act*; and generally~~  
 14 ~~relating to ~~private contracts~~ reimbursement of non-contracting providers for~~  
 15 ~~health care services ~~made by~~ delivered to subscribers or enrollees of health~~  
 16 ~~maintenance organizations.~~

17 BY repealing  
 18 Chapter 120 of the Acts of the General Assembly of 1999  
 19 Section 5

20 BY repealing and reenacting, without amendments,  
 21 Article - Health - General  
 22 Section 19-710(o)  
 23 Annotated Code of Maryland  
 24 (1996 Replacement Volume and 1999 Supplement)

25 BY repealing and reenacting, with amendments,  
 26 Article - Health - General  
 27 Section ~~19-710(o)~~ and 19-710.1  
 28 Annotated Code of Maryland  
 29 (1996 Replacement Volume and 1999 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 31 MARYLAND, That the Laws of Maryland read as follows:

32 **Chapter 120 of the Acts of 1999**

33 [SECTION 5. AND BE IT FURTHER ENACTED, That the Maryland  
 34 Insurance Administration, in consultation with the Health Care Access and Cost  
 35 Commission, shall study the usual, customary, and reasonable rates paid by health  
 36 maintenance organizations for the claims of non-contracting health care providers  
 37 under the provisions of § 19-710.1 of the Health - General Article. The study shall  
 38 include a review of methodologies for rates of payment for services provided by  
 39 non-contracting health care providers in the State. The findings of the study shall be  
 40 presented in an interim report submitted on or before January 1, 2000 and, subject to  
 41 § 2-1246 of the State Government Article, a final report submitted on or before

1 September 1, 2000 to the House Economic Matters Committee and the Senate  
 2 Finance Committee.]

3 **Article - Health - General**

4 19-710.

5 (o) (1) Except as provided in paragraph (3) of this subsection, individual  
 6 enrollees and subscribers of health maintenance organizations issued certificates of  
 7 authority to operate in this State shall not be liable to any health care provider for  
 8 any covered services provided to the enrollee or subscriber.

9 (2) (i) A health care provider or any representative of a health care  
 10 provider may not collect or attempt to collect from any subscriber or enrollee any  
 11 money owed to the health care provider by a health maintenance organization issued  
 12 a certificate of authority to operate in this State.

13 (ii) A health care provider or any representative of a health care  
 14 provider may not maintain any action against any subscriber or enrollee to collect or  
 15 attempt to collect any money owed to the health care provider by a health  
 16 maintenance organization issued a certificate of authority to operate in this State.

17 (3) Notwithstanding any other provision of this subsection, a health care  
 18 provider or representative of a health care provider may collect or attempt to collect  
 19 from a subscriber or enrollee:

20 (i) Any copayment or coinsurance sums owed by the subscriber or  
 21 enrollee to a health maintenance organization issued a certificate of authority to  
 22 operate in this State for covered services provided by the health care provider; {or}

23 (ii) Any payment or charges for services not covered under the  
 24 subscriber's contract; ~~OR~~

25 ~~(iii) ANY PAYMENT OR CHARGES FOR COVERED SERVICES UNDER §~~  
 26 ~~19-710.1(D) OF THIS SUBTITLE.~~

27 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
 28 read as follows:

29 **Article - Health - General**

30 19-710.1.

31 (a) (1) In this section the following words have the meanings indicated.

32 (2) "Enrollee" means a subscriber or member of the health maintenance  
 33 organization.

34 (3) "Covered service" means a health care service included in the benefit  
 35 package of the health maintenance organization and rendered to an enrollee of the

1 health maintenance organization by a health care provider, including a physician or  
2 hospital, not under written contract with the health maintenance organization:

3 (i) Pursuant to a verbal or written referral by the enrollee's health  
4 maintenance organization or by a provider under written contract with the enrollee's  
5 health maintenance organization; or

6 (ii) That has been preauthorized or otherwise approved either  
7 verbally or in writing by the enrollee's health maintenance organization or a provider  
8 under written contract with the enrollee's health maintenance organization.

9 (4) "Adjunct claims documentation" means an abstract of an enrollee's  
10 medical record which describes and summarizes the diagnosis and treatment of, and  
11 services rendered to, the enrollee.

12 (b) (1) In addition to any other provisions of this subtitle, for a covered  
13 service rendered to an enrollee of a health maintenance organization by a health care  
14 provider not under written contract with the health maintenance organization, the  
15 health maintenance organization or its agent:

16 (i) Shall pay the health care provider within 30 days after the  
17 receipt of a claim in accordance with the applicable provisions of this subtitle; and

18 (ii) Shall pay the claim submitted by:

19 1. A hospital at the rate approved by the Health Services  
20 Cost Review Commission; and

21 2. Any other health care provider at ~~the rate billed or at the~~  
22 ~~usual, customary, and reasonable rate~~ THE GREATER OF:

23 A. 125% OF THE RATE THE HEALTH MAINTENANCE  
24 ORGANIZATION PAYS IN THE SAME GEOGRAPHIC AREA, FOR THE SAME COVERED  
25 SERVICE, TO A SIMILARLY LICENSED PROVIDER UNDER WRITTEN CONTRACT WITH  
26 THE HEALTH MAINTENANCE ORGANIZATION; OR

27 B. THE RATE AS OF JANUARY 1, 2000 THAT THE HEALTH  
28 MAINTENANCE ORGANIZATION PAID IN THE SAME GEOGRAPHIC AREA, FOR THE  
29 SAME COVERED SERVICE, TO A SIMILARLY LICENSED PROVIDER NOT UNDER  
30 WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION.

31 ~~(2) A health maintenance organization that pays a health care provider~~  
32 ~~at the usual, customary, and reasonable rate:~~

33 ~~(i) Except for services rendered to medical assistance recipients or~~  
34 ~~for services rendered under a contract entered into under § 1876(g) of the federal~~  
35 ~~Social Security Act (42 U.S.C. § 1395mm), may not use Medicare, Medicaid, or~~  
36 ~~workers' compensation payments as part of any methodology used to determine a~~  
37 ~~payment at the usual, customary, and reasonable rate; [and]~~

1 ~~(H) SHALL BEAR THE BURDEN OF PROVING THAT ITS PAYMENT IS~~  
2 ~~AT THE USUAL, CUSTOMARY, AND REASONABLE RATE; AND~~

3 ~~{(ii)} (H) On request of the health care provider, shall disclose the~~  
4 ~~methodology used to determine the amount of payment.~~

5 ~~(2) A HEALTH MAINTENANCE ORGANIZATION SHALL DISCLOSE, ON~~  
6 ~~REQUEST OF A HEALTH CARE PROVIDER NOT UNDER WRITTEN CONTRACT WITH THE~~  
7 ~~HEALTH MAINTENANCE ORGANIZATION, THE REIMBURSEMENT RATE REQUIRED~~  
8 ~~UNDER PARAGRAPH (1)(II)2 OF THIS SUBSECTION.~~

9 ~~(3) THE USUAL, CUSTOMARY, AND REASONABLE RATE IS THE AMOUNT~~  
10 ~~AT WHICH 90% OF ALL CLAIMS SUBMITTED TO THE HEALTH MAINTENANCE~~  
11 ~~ORGANIZATION IN THE PRECEDING CALENDAR YEAR FOR THE SAME SERVICE~~  
12 ~~WOULD BE PAID IN FULL.~~

13 (c) (1) A health maintenance organization may seek reimbursement from an  
14 enrollee for any payment under subsection (b) of this section for a claim or portion of  
15 a claim submitted by a health care provider and paid by the health maintenance  
16 organization that the health maintenance organization determines is the  
17 responsibility of the enrollee.

18 (2) The health maintenance organization may request and the health  
19 care provider shall provide adjunct claims documentation to assist in making the  
20 determination under paragraph (1) of this subsection or under subsection (b) of this  
21 section.

22 ~~(D) (1) A HEALTH MAINTENANCE ORGANIZATION SUBSCRIBER OR~~  
23 ~~ENROLLEE MAY ENTER INTO A PRIVATE CONTRACT WITH A HEALTH CARE PROVIDER~~  
24 ~~THAT CONTAINS A PROVISION UNDER WHICH THE SUBSCRIBER OR ENROLLEE~~  
25 ~~ACCEPTS RESPONSIBILITY FOR PAYING CHARGES TO THE HEALTH CARE PROVIDER~~  
26 ~~IF:~~

27 ~~(I) THE HEALTH CARE PROVIDER DOES NOT HAVE A CONTRACT~~  
28 ~~WITH THE SUBSCRIBER'S OR ENROLLEE'S HEALTH MAINTENANCE ORGANIZATION;~~

29 ~~(II) THE HEALTH MAINTENANCE ORGANIZATION DID NOT REFER~~  
30 ~~THE SUBSCRIBER OR ENROLLEE TO THE HEALTH CARE PROVIDER;~~

31 ~~(III) THE HEALTH CARE SERVICES PROVIDED ARE NOT EMERGENCY~~  
32 ~~SERVICES; AND~~

33 ~~(IV) BEFORE TREATMENT, THE PATIENT AND HEALTH CARE~~  
34 ~~PROVIDER SIGN A FORM DEVELOPED BY THE HEALTH EDUCATION AND ADVOCACY~~  
35 ~~UNIT IN THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY~~  
36 ~~GENERAL.~~

37 (2) THE FORM DESCRIBED IN PARAGRAPH (1)(IV) OF THIS SUBSECTION  
38 SHALL STATE IN PLAIN LANGUAGE THAT:

1                    ~~(I)~~        THE SUBSCRIBER OR ENROLLEE IS ACCEPTING FINANCIAL  
2 RESPONSIBILITY FOR THE HEALTH CARE SERVICES; AND

3                    ~~(H)~~        THE CONDITIONS OF PARAGRAPH (1)(I), (II), AND (III) OF THE  
4 SUBSECTION ARE MET.

5                    ~~(E)~~        THE PROVISIONS OF THIS SECTION AND § 19-710(O) OF THIS SUBTITLE DO  
6 NOT APPLY TO HEALTH CARE SERVICES THAT ARE COVERED BY THE HEALTH  
7 MAINTENANCE ORGANIZATION SOLELY AS A RESULT OF A POINT OF SERVICE  
8 OPTION OF A HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN § 19-710.2 OF  
9 THIS SUBTITLE.

10                  ~~(F)~~        IF THE HEALTH MAINTENANCE ORGANIZATION PAYS A CLAIM FOR A  
11 HEALTH CARE SERVICE FOR WHICH THE SUBSCRIBER OR ENROLLEE HAS PRIVATELY  
12 CONTRACTED WITH A HEALTH CARE PROVIDER UNDER SUBSECTION (D) OF THIS  
13 SECTION, THE PATIENT OR HEALTH CARE PROVIDER MAY ACCEPT PAYMENT  
14 WITHOUT AFFECTING THE PRIVATE CONTRACT.

15                  ~~(G)~~        ~~(D)~~        (1)     A HEALTH CARE PROVIDER MAY ENFORCE THE PROVISIONS OF  
16 THIS SECTION BY FILING A COMPLAINT AGAINST A HEALTH MAINTENANCE  
17 ORGANIZATION WITH THE MARYLAND INSURANCE ADMINISTRATION OR BY FILING A  
18 CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION UNDER § 1-501 OR § 4-201  
19 OF THE COURTS ARTICLE.

20                  (2)     THE MARYLAND INSURANCE ADMINISTRATION OR A COURT SHALL  
21 AWARD REASONABLE ATTORNEY FEES IF THE COMPLAINT OF THE HEALTH CARE  
22 PROVIDER IS SUSTAINED.

23                  ~~[(d)]~~   ~~(H)~~        ~~(E)~~        In addition to any other penalties under this subtitle, the  
24 Commissioner may impose a penalty not to exceed \$5,000 on any health maintenance  
25 organization which violates the provisions of this section if the violation is committed  
26 with such frequency as to indicate a general business practice of the health  
27 maintenance organization.

28        SECTION 3. AND BE IT FURTHER ENACTED, That the Health Services  
29 Cost Review Commission, in consultation with the Maryland Health Care  
30 Commission, the Maryland Insurance Administration, health care providers, and  
31 health maintenance organizations, shall develop a methodology for ensuring  
32 reasonable payment to health care providers not under written contract with a health  
33 maintenance organization. The Commission shall report its findings and  
34 recommendations to the House Economic Matters Committee and the Senate Finance  
35 Committee, in accordance with § 2-1246 of the State Government Article, on or before  
36 January 1, 2002.

37        SECTION 4. AND BE IT FURTHER ENACTED, That this Act applies to health  
38 care services rendered on or after October 1, 2000.

39        SECTION 4.5. AND BE IT FURTHER ENACTED, That ~~Section 2~~ Sections 2  
40 and 4 of this Act shall take effect October 1, 2000. ~~Section 2~~ Sections 2 and 4 of this  
41 Act shall remain effective for a period of 1 year and 9 months and, at the end of June

1 30, 2002, with no further action required by the General Assembly, ~~Section 2~~ Sections  
2 ~~2 and 4~~ of this Act shall be abrogated and of no further force and effect.

3 SECTION ~~2~~ 5 ~~6~~. AND BE IT FURTHER ENACTED, That, subject to Section 4  
4 5 of this Act, this Act shall take effect October 1, 2000.